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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 956 of 2017****Order Reserved on 23/08/2018****Order delivered on 26/10/2018**

Ramakant Shrivastav S/o Late Shri Shankar Shrivastav, Aged about 42 years,
R/o- Abhiyanta (BRI), Railway Colony, Thana- Gudhiyari, Thasil and District-
Raipur (C.G.).

--- Applicant**Versus**

1. Sapna Shrivastav, D/o Shri Radhika Prasad Shrivastav, aged about 39 years,
2. Satyam Shrivastav (Minor), S/o- Shri Ramakant Shrivastav, aged about 11 years, Through- Natural Guardian and mother Smt. Sapna Shrivastav
Both R/o M.I.F-06, Jagannathpuram, Rajkishore Nagar, P.S.- New Sarkanda, Tahsil and District- Bilaspur (C.G.)

---- Respondents**AND****Criminal Revision No. 1060 of 2017**

1. Sapna Shrivastav, D/o Shri Radhika Prasad Shrivastav, aged about 39 years,
2. Satyam Shrivastav (Minor), S/o- Shri Ramakant Shrivastav, aged about 11 years, Through- Natural Guardian and mother Smt. Sapna Shrivastav
D/o Shri Radhika Prasad Shrivastava, aged about 39 years,
Both R/o M.I.F-06, Jagannathpuram, Rajkishore Nagar, P.S.- New Sarkanda, Tahsil and District- Bilaspur (C.G.)

--- Applicants**Versus**

Ramakant Shrivastav Aged about 42 years, R/o- Engineer (B.R.I.) Railway Colony Raipur, Thasil and District- Raipur (C.G.).

---- Respondent

For Applicant (In CRR No. 956/2017)	:	Mr. Vinay Pandey, Advocate
For Applicants (In CRR No. 1060/2017)	:	Mr. A.S. Rajput, Advocate
For Respondents (In CRR No. 956/2017)	:	Mr. A.S. Rajput, Advocate
For Respondent (In CRR No. 1060/2017)	:	Mr. Vinay Pandey, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

CAV Order

1. Since both the revisions arise out of same order, therefore, they are being disposed of by this common order.
2. Applicant No. 1, Sapna Shrivastava (in CRR No. 1060/2017) is the wife of applicant- Ramakant Shrivastava (in CRR No. 956/2017). Their marriage was solemnized in the year 1995 and out of their wedlock, they have two children namely- Satyam (applicant no. 2 in CRR 1060/2017) and Shivam.
3. Husband- Ramakant (henceforth 'the husband') had moved an application seeking divorce from wife- Sapana (henceforth 'the wife') before the Family Court, Shadol (M.P.), which was allowed vide decree of divorce dated 01/11/2012. Thereafter, the wife filed an application under Section 125 of the Cr.P.C before the Family Court, Bilaspur on the ground that the decree of divorce has been obtained by the husband fraudulently. It was further pleaded in the application that before divorce an agreement was executed between both of them, but the husband has breached the terms of agreement dated 17/10/2012. It was further pleaded that after obtaining divorce from her, the husband has performed second marriage. The wife is unable to maintain herself. Since, after divorce she had not performed marriage, she is entitled to get maintenance from her husband. Therefore, she has prayed for grant of monthly maintenance of Rs. 15000/- in her favour and Rs. 15000/- in favor of son- Satyam.
4. The husband opposed the application filed by the wife. It was pleaded by him that the wife had developed illicit intimacy with other persons. On the ground of adultery and cruelty on the part of wife, the learned Family Court, Shadol vide judgment dated 01/11/2012 passed the decree of divorce in

favour of husband, which was not challenged by the wife in any superior Court. Though, she is divorced wife of him, she is living adulterous life, therefore, she is not entitled to get any maintenance from her husband. It was further pleaded that the wife is also working private job and her earning is Rs. 20,000/- monthly. She has also encroached the house of husband and is residing in the said house. With regard to minor son, the husband is ready to maintain him, if he resides with him.

5. The wife herself examined as Applicant Witness No.1 and one other witness namely Ajay Singh as Applicant Witness No.2 before the Family Court, Bilaspur. The husband himself examined as Non-Applicant Witness No.1. Both the parties had submitted some documentary evidence.
6. After trial, the learned Family Court vide order 01/09/2017 rejected the application so far as relates to wife on the ground that since a decree of divorce was passed against her to the extent that she was leading adulterous life and is capable to maintain herself, and for these reasons she is not entitled to get any maintenance from her husband. With regard to minor son- Satyam, the Family Court, Bilaspur allowed the application and the husband/ father of Satyam was directed to pay Rs. 20,000/- as monthly maintenance in favour of minor son.
7. Criminal Revision No. 956/2017 has been preferred by the husband on the ground that the Family Court has exceeded the quantum of maintenance sought by the wife and son. Both (the wife and the son) had prayed to grant of maintenance of Rs. 15000/- - 150000/- in favour of them, but the learned Family Court committed serious error by exceeding the amount of maintenance to Rs. 20,000/- without any reason and rhyme. The Family

Court has exceeded its jurisdiction which is illegal. The husband has admitted his earning to Rs. 60,000/-, but he is maintaining his second wife and two sons. It is not possible for him to pay Rs. 20,000/- per month to son- Satyam. Thus, the maintenance granted in favour of son- Satyam is on higher side which may be reduced.

8. Criminal Revision No. 1060/2017 has been preferred by the wife and son on the grounds that the learned Family Court has failed to see that being aggrieved by the decree of divorce dated 01/11/2012, the wife had preferred a First Appeal No. 716/2014, which is pending before the High Court of Madhya Pradesh, therefore, the matter is still substantiated. Being a divorced wife, she is entitled to get maintenance from her husband. Apart from that, the maintenance granted to the son is on lower side which should be suitably enhanced.
9. Learned counsel appearing on behalf of the husband submitted that if the Civil Court has granted decree of divorce on the ground that the wife was living in adultery, then, as per sub-Section 4 of Section 125 of the Code of Criminal Procedure, she loses her right to claim maintenance from her former husband. He would refer to sub-Section 4 of Section 125 of the Code of Criminal Procedure to substantiate the said contention. According to him, the term "adultery", as employed in sub-Section 4 of Section 125 of the Code of Criminal Procedure, is applicable even to a divorced wife, whose marriage was dissolved on the ground of adultery. He further submitted that so far as the ground of adultery is concerned, the disqualification arising out of the same is everlasting and the said disqualification will not cease to exist, after the woman has changed her course from the path of adultery. He further submitted that in the instant

case, the decree of divorce has been obtained by party, which was within the knowledge of wife that a decree of divorce has been passed against her on the ground of adultery, but she did not disclose this fact before the Family Court.

10. Learned counsel appearing for the wife submitted that since the decree of divorced has been challenged before the High Court of Madhya Pradesh, therefore, the said decree does not attain finality. He further submitted that sub-Section 4 of Section 125 of the Code of Criminal Procedure is not applicable to a divorced wife as the same is applicable only to a woman whose marriage is still subsisting.
11. In this regard, if we go through the record of the Family Court, it is clear that Applicant Witness No.1, Sapna had admitted the fact that the decree of divorced has been passed against her by the Family Court, Shadol. The said decree of divorce is Ex.D-2. Vide judgment dated 01/11/2012, the learned Family Court, Shadol granted a decree of divorce in favour of husband on the ground that the wife is living adulterous life with other persons. The said decree was also granted on the ground of cruelty on the part of the wife. From the record, it is also clear that there was no pleading and evidence made by the wife that she has challenged the said decree of divorce. For the shake of argument, if it is admitted that she has challenged the decree of divorce before the High Court of M.P., but still there is finding of competent Civil Court against her that she was living adulterous life.
12. The term "wife", as employed in sub-Section 4 of Section 125 Cr.P.C, shall undoubtedly include a divorced wife also. This is manifest from the

Explanation, which states that for the purposes of this Chapter, wife includes a woman, who has been divorced. It is noticeable that this Explanation is not for the purpose of sub-Section 1 of Section 125 Cr.P.C alone and it is for the purpose of the whole Chapter IX, which includes sub-Section 4 also. Therefore, even after a decree of divorce is granted, if the wife wants to retain her right to claim maintenance from her former husband, she is expected to continue to maintain the same discipline as she was expected to maintain during her marital ties, after the snapping of the marital ties also. In other words, during the subsistence of the marriage, the wife cannot live in adultery and in the event she lives in adultery, she loses her right to claim maintenance from her husband, similarly, even after the divorce, if she continues to maintain the same discipline, she will continue to retain the right to claim maintenance from her former husband. If she commits any breach of the said obligation and starts living in adultery, i.e. having sexual relationship with another man, she will lose her right to claim maintenance.

13. Apart from this, the learned Family Court has also rejected the claim of wife on the ground that she has sufficient means to maintain her. In this regard, if we go through the statements of parties, the same will reveal that the wife had admitted the fact that earlier she was engaged within the business of Patanjali Products. She was also engaged in the business of property dealing and she has earned Rs. 7 to 7.5 lakhs in two years from that work. She also admitted the fact that she is still doing the work of property, however she did not disclose the fact that presently how much she is earning from the said work. She also admitted the fact that presently she is residing in one of the house of her husband at Bilaspur. Applicant

Witness No. 2, Ajay Singh also admitted the fact that the wife is engaged in the business of property dealing.

14. From the above, it is clear that the wife has sufficient mean to maintain herself. Therefore, the finding of the learned Family Court, Bilaspur in this regard is in accordance with law.
15. With regard to maintenance granted in favour of son- Satyam is concerned. Admittedly, the husband is working in Railways and was getting Rs. 60,000/- monthly salary at the relevant time. The husband has performed second marriage also and from his second marriage, he has one son, and one son from former wife- Sapna. Though, the husband has stated that his second wife is also dependent on him, one certificate which has been obtained under Right to Information Act on 16/05/2018, shows that Suman Singh, second wife of the husband is working as Netra Sahayak Adhikari. Thus, it is clear that second wife of the husband is working lady and she is not dependent upon the husband.
16. From the records and the pleading, it is also clear that Rs. 15000/- monthly maintenance was demanded for son-Satyam before the Family Court, Bilaspur, but without assigning any reasons, the learned Family Court has granted Rs. 20,000/- in favour of son, which is perverse.
17. Looking to the financial status and other responsibilities of the husband, Rs. 15000/- as demanded and pleaded by the wife for son- Satyam, is just and proper. Therefore, the order of monthly maintenance dated 01/09/2017 passed by the Family Court, Bilaspur is modified to the extent that now the husband- Ramakant Shrivastava shall pay Rs. 15,000/- monthly maintenance towards son- Satyam (respondent No. 2 in CRR No.

956/2017), instead of Rs. 20,000/-. This modification in the monthly maintenance shall be effective from today.

18. In the result, Criminal Revision No. 1060/2017 filed by the wife and son is dismissed. Criminal Revision No. 956/2017 filed by the husband is partly allowed to the extent indicated above.

Sd/-
(Arvind Singh Chandel)
Judge

Rahul